IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2844 of 1999
With
SPECIAL CIVIL APPLICATION No. 2853 of 1999
With
SPECIAL CIVIL APPLICATION No. 2839 of 1999
With
SPECIAL CIVIL APPLICATION No. 2838 of 1999
With
SPECIAL CIVIL APPLICATION No. 2850 of 1999
With
SPECIAL CIVIL APPLICATION No. 867 of 1999

For Approval and Signature:

HON'BLE MR JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GEB - Petitioner(s)

Versus

ROZAK M JUNEJA - Respondent(s)

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Appearance :
MR SP HASURKAR for Petitioner No(s).: 1.

MRS SANGEETA N PAHWA for Respondent No(s).: 1.
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CORAM : HON'BLE MR JUSTICE KS JHAVERI

Date : 15/07/2005

ORAL JUDGMENT

1.0 The petitioner Board has challenged the order dated 18.09.1998 passed by the Labour Court, Jamnagar, in six Reference cases, whereby the said references were allowed and the petitioner Board was directed to reinstate the respondents with continuity of service but without any back wages.

2.0 The petitioner Board is constituted under the provisions of the Electricity (Supply) Act, 1948 and is involved in the transmission and distribution of electricity generated by it. It is the case of the petitioner that the respondents were appointed purely on temporary and ad hoc basis on daily wages N.M.R. Register, looking to the exigency of work w.e.f. 01.12.1984. Their services were terminated since the work for which they were appointed was over.

2.1 Pursuant to the above, the respondent raised industrial dispute, which ultimately, came to be referred to the Labour Court for adjudication. The Labour Court, after hearing the parties, passed the impugned order by

which the said references came to be allowed. Hence, these petitions.

3.0 Mr. SP Hasurkar learned advocate for the petitioner Board has contended that any of the respondents had not completed 240 days of service in any of the calendar years, and therefore, they are not entitled for any protection. He has submitted that the respondents workmen had not produced on record any documentary evidence in support of their case before the Labour Court that they have completed 240 days of service in any calendar year and that the Circular of the petitioner Board was not applicable on the date of the references.

3.1 Mr. Hasurkar has further contended that the Labour Court has failed to appreciate the fact that the respondents workmen were appointed on temporary ad hoc basis on N.M.R. Register and as soon as the work was over, their services came to be terminated. Therefore, the Labour Court ought not to have allowed the references in question.

4.0 Mrs. Pahwa learned advocate for the respondents workmen has supported the award of the Labour Court. From the documents placed on record, she has pointed out that

the conclusion arrived at by the Labour Court was in consonance with the evidence on record.

4.1 Mrs. Pahwa has further submitted that the petitioner being a statutory authority, it ought to have given liberal meaning to the Circular prevailing at the relevant point of time and ought to have given equal treatment to the respondents workmen. She has further submitted that apart from the above, while filling up the post on N.M.R. Register, the petitioner Board had not recalled the respondents workmen. She has, therefore, submitted that the impugned award of the Labour Court is just and proper and appropriate directions may be issued to the petitioner for implementing the same from the date of the publication of the award and costs may also be imposed.

5.1 I have heard learned counsel for the parties and perused the documents placed on record. Having through the Records & Proceedings of Special Civil Applications No.2839/1999, 2838/1999, 2850/1999 & 867/1999 of which were examined by this Court, it is clear that the respondents workmen have completed 413, 421, 172 and 435 days of service respectively.

5.2 Apart from that, from the record it transpires that while leading evidence on behalf of the petitioner, a Senior Assistant, authorized by the petitioner Board, had stated that as per the Circular that prevailed at the relevant point of time, N.M.R. Register employees were required to be regularized and that the Statement which was prepared was prepared on the basis of the Muster Roll available at that point of time. It was also further stated therein that some of the Muster Rolls were not available when the workmen were retrenched and when the said Statement was prepared. Thus, it is clear that the decision of the petitioner Board was based on incomplete data and no seniority list was maintained as required.

5.3 During the course of arguments, Mr. Hasurkar learned advocate for the petitioner had sought permission to produce on record the Circular of the petitioner Board. It is not proper on the part of a learned advocate to produce a document on record which he wants to rely upon at the final hearing stage. The Advocate for the petitioner could have pointed out the same from the Records & Proceedings of the Labour Court. Hence, the request made by Mr. Hasurkar was not accepted in the interest of all concerned.

5.4 The contention raised by Mr. Hasurkar that the Circular in question will be applicable on the date of the reference, is required to be rejected in view of the fact that the said Circular was canceled in the year 1991 and the termination took place prior thereto. Hence, the said Circular is prospective.

5.5 In the case on hand, it cannot be said that breach of the provisions of Section 25(F) of the Industrial Disputes Act, 1947 had taken place in view of the fact that the Labour Court has proceeded on the basis of the service conditions prevailing at the relevant point of time and that no service conditions can be changed without any Notice to the employees concerned. Hence, the contention raised by the learned advocate for the petitioner that there was no breach of the provisions of Section 25(F) of the said Act is answered in the negative.

5.6 No other contentions have been raised by Mr. Hasurkar learned advocate for the petitioner Board. In that view of the matter, I am of the opinion that the Labour Court was completely justified in allowing the references of the respondents. I am in complete agreement with the reasonings given by and the findings arrived at

by the Labour Court and find no reason to interfere in this petitions.

6.0 In the result, the petitions are dismissed. Rule is discharged with no order as to costs. Interim relief granted earlier stands vacated.

(K. S. JHAVERI, J.)

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